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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADVANCED CODING
TECHNOLOGIES LLC,
Plaintiff,
v.
GOOGLE LLC,
Defendant.

) Case No. 25-80123
) (Related to Pending Out-of-State
Action: 2:24-cv-00353-JRG in the
Eastern District of Texas)
) **NONPARTY DR. PIERRE-
ANTHONY LEMIEUX'S NOTICE
OF MOTION AND MOTION TO
QUASH DEPOSITION SUBPOENA;
MEMORANDUM OF POINTS AND
AUTHORITIES**
) [Filed concurrently with Declaration of
Mayela C. Montenegro-Urch and
[Proposed] Order]
) Date: To Be Set
Time: To Be Set
Judge: To Be Assigned
Ctrm: To Be Assigned

1 **NOTICE OF MOTION AND MOTION TO QUASH**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on _____, 2025, at _____ a.m./p.m.,
4 or as soon thereafter as this matter may be heard before the Honorable _____ in
5 Courtroom _____ of the United States Courthouse located at _____,
6 Dr. Pierre-Anthony Lemieux (“Dr. Lemieux”) will move the Court to quash the
7 deposition subpoena to Dr. Lemieux served by Advanced Coding Technologies, LLC
8 (“ACT”) pursuant to Federal Rule of Civil Procedure 45(d)(3).

9 This Motion is based on this Notice of Motion and Motion to Quash, the
10 accompanying Memorandum of Points and Authorities, the concurrently-filed
11 Declaration of Mayela C. Montenegro-Urch (“Montenegro-Urch Decl.”) with exhibits
12 (including the Declaration of Patrick A. Lujin (“Lujin Decl.”) attached as Exhibit A to
13 the Montenegro-Urch Decl.), and upon such further evidence or argument as may be
14 presented at or before the hearing of this Motion.

15
16 Dated: May 19, 2025

Respectfully submitted,

17 SHOOK, HARDY & BACON L.L.P.

18 By: /s/ Mayela C. Montenegro-Urch
19 Mayela C. Montenegro-Urch
20 Aubrey L. Kramer

21 Attorneys for Nonparty Dr. Pierre-
Anthony Lemieux

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 ACT served two individual deposition subpoenas on Dr. Lemieux. *See* Exhibits
 3 B and C to the Montenegro-Urch Decl. Dr. Lemieux moves to quash each deposition
 4 subpoena, with this action directed towards Exhibit B. There is no justification for
 5 ACT serving nonparty discovery purportedly aimed at Dr. Lemieux. Rather, this
 6 individual Subpoena is an attempted end-run around four nonparty subpoenas
 7 previously served on The Alliance for Open Media (“AOMedia”). ACT has not
 8 identified any relevant or unique information sought from this Subpoena that it does
 9 not already have or cannot obtain (or should have requested) through the AOMedia
 10 subpoenas. This individual Subpoena is improper and highly burdensome because
 11 ACT is trying to force Dr. Lemieux (the current Executive Director of AOMedia) to
 12 sit for a deposition to gain an unfair advantage in ACT’s ongoing negotiations with
 13 AOMedia over the four nonparty subpoenas ACT served on AOMedia in connection
 14 with the same two underlying cases.

15 **I. BACKGROUND**

16 On May 2, 2025, ACT served the two individual deposition subpoenas to Dr.
 17 Lemieux via email. *See* Lujin Decl.¹ at ¶ 2. The deposition subpoenas to Dr. Lemieux
 18 relate to ACT’s underlying patent infringement cases against Google and Apple. *See*
 19 Exhibits B and C.

20 ACT filed patent infringement cases in the Eastern District of Texas against
 21 Google and Apple on May 10, 2024, and July 22, 2024, respectively. *See Advanced*
 22 *Coding Techs., LLC v. Google LLC*, No. 2:24-cv-00353-JRG (E.D. Tex.); *Advanced*
 23 *Coding Techs., LLC v. Apple Inc.*, No. 2:24-cv-00572-JRG (E.D. Tex.) (the
 24 “Underlying EDTX Cases”). ACT accused various Google products of infringing
 25 ACT’s patents, such as Google’s Pixel smartphone and tablet products. *See* Lujin
 26 Decl. at ¶ 3; *Advanced Coding Techs., LLC v. Google LLC*, No. 2:24-cv-00353-JRG,

27 ¹ The Declaration of Patrick A. Lujin (“Lujin Decl.”) is attached as Exhibit A to the
 28 Montenegro-Urch Decl.

1 Dkt. 23 at ¶ 86 (E.D. Tex. Aug. 2, 2024) (ACT's First Amended Complaint against
 2 Google). ACT also accused Apple products, such as iPhones and iPads, of infringing
 3 ACT's patents. *See Lujin Decl.* at ¶ 4; *Advanced Coding Techs., LLC v. Apple Inc.*,
 4 No. 2:24-cv-00572-JRG, Dkt. 1 at ¶ 29 (E.D. Tex. July 22, 2024) (ACT's Complaint
 5 against Apple).

6 Dr. Lemieux earned a Ph.D. in physics from the University of California at Los
 7 Angeles in 2001, and he has been a Partner at Sandflow Consulting since 2009. *See*
 8 Lujin Decl. at ¶ 5; <https://www.linkedin.com/in/pierrealemieux>. Dr. Lemieux first
 9 became associated with AOMedia in January 2024, and he has served as AOMedia's
 10 Executive Director since January 2024. *See* Lujin Decl. at ¶ 6. AOMedia is a non-
 11 profit organization that is a nonparty to the Underlying EDTD Cases. *Id.* at ¶ 7. ACT
 12 does not contend that either Dr. Lemieux or AOMedia has been involved in the
 13 development of any Google or Apple products, and such involvement would not be
 14 appropriate under AOMedia's charter. *Id.* at ¶ 9.

15 In February 2025, ACT issued four nonparty subpoenas to AOMedia in
 16 connection with its Underlying EDTD Cases against Google and Apple. *Id.* at ¶ 8.
 17 ACT's subpoenas to AOMedia included a total of 34 document requests and 36
 18 deposition topics. *Id.* AOMedia responded in writing to the four AOMedia Subpoenas
 19 on March 13, 2025. *Id.* at ¶ 10. AOMedia and ACT have continued to meet-and-
 20 confer regarding AOMedia's responses to the four AOMedia Subpoenas – most
 21 recently on May 15, 2025 with follow-up email correspondence on May 16, 2025. *Id.*
 22 at ¶ 10-11. ACT admits that the individual subpoenas to Dr. Lemieux are related to the
 23 AOMedia subpoenas. *Id.* at ¶ 11. ACT clarified during the May 15 meet-and-confer
 24 that ACT is only seeking documents and information from AOMedia from 2018 and
 25 earlier because AOMedia published the AV1 specification in 2018. *Id.* at ¶ 12. ACT
 26 also stated that it does not want to depose Dr. Lemieux until after AOMedia has
 27 produced additional documents to ACT. *Id.* This Motion is necessary because ACT
 28

1 refused to withdraw this Subpoena without prejudice. *Id.* at ¶ 13.

2 **II. LEGAL STANDARD**

3 “Discovery from non-parties is governed by Federal Rule of Civil Procedure
 4 45.” *Natera, Inc. v. Caredx, Inc.*, No. 23-mc-80117-LJC, 2023 U.S. Dist. LEXIS
 5 95161, at *4-5 (N.D. Cal. May 31, 2023). The court for the district where compliance
 6 is required must quash or modify a subpoena that subjects a person to undue burden.”
 7 Fed. R. Civ. P. 45(d)(3)(A)(iv). The party issuing the subpoena must demonstrate that
 8 the discovery is relevant. *Strike 3 Holdings, LLC v. Doe*, No. 4:18-CV-04993-KAW,
 9 2019 U.S. Dist. LEXIS 19497, at *4 (N.D. Cal. Feb. 6, 2019).

10 “[T]he Ninth Circuit has long held that nonparties subject to discovery requests
 11 deserve extra protection from the courts.” *High Tech Medical Instrumentation, Inc. v.*
 12 *New Image Indus., Inc.*, 161 F.R.D. 86, 88 (N.D. Cal. 1995) (citing *United States v.*
 13 *C.B.S.*, 666 F.2d 364, 371-72 (9th Cir. 1982)); *see also Lemberg L. LLC v. Hussin*,
 14 No. 16-MC-80066-JCS, 2016 U.S. Dist. LEXIS 76772, at *15 (N.D. Cal. June 13,
 15 2016) (same).

16 **III. THE NONPARTY DEPOSITION SUBPOENA TO DR. LEMIEUX**
 17 **SHOULD BE QUASHED**

18 The deposition Subpoena to nonparty Dr. Lemieux should be quashed because
 19 it seeks duplicative and burdensome discovery from Dr. Lemieux as an individual, in
 20 an attempted end-run around ACT’s own company-level subpoenas to AOMedia. The
 21 Subpoena to Dr. Lemieux purports to seek information ACT should seek from the
 22 defendants in ACT’s Texas lawsuits or, if somehow relevant to AOMedia, from
 23 nonparty AOMedia.

24 ACT is trying to conduct duplicative discovery in parallel against nonparties
 25 Dr. Lemieux and AOMedia by serving multiple deposition subpoenas to AOMedia’s
 26 Executive Director instead of addressing AOMedia’s objections to ACT’s earlier-in-
 27 time, company-level subpoenas.

1 **A. The Individual Deposition Subpoena is Highly Burdensome to Dr.**
 2 **Lemieux**

3 ACT should be negotiating directly with AOMedia regarding the document
 4 requests and topics in the AOMedia subpoenas. Instead, ACT elected to serve multiple
 5 subpoenas on an *individual* who is the Executive Director of AOMedia. Exhibits B
 6 and C. ACT is not seeking discovery unique to Dr. Lemieux because he was not
 7 associated with AOMedia until 2024 – nearly six years after the relevant time period.
 8 Lujin Decl. at ¶¶ 6, 12. ACT appears to want to depose Dr. Lemieux just to seek more
 9 information about AOMedia, (*id.* at ¶ 12), and to ask broad questions, in hopes of
 10 obtaining keyword-based email discovery of AOMedia and probing for any possible
 11 discovery about the defendants, Google and Apple. Anything to be gained from Dr.
 12 Lemieux regarding the Underlying EDTX Cases is cumulative of the discovery ACT
 13 has served in connection with those cases, including against AOMedia.

14 To the extent Dr. Lemieux has relevant AOMedia information sought by ACT,
 15 a deposition in his personal capacity would be “unreasonably cumulative, duplicative
 16 and burdensome,” because it would be a deposition “merely to confirm what kinds of
 17 documents [AOMedia] has and whether there is anything else to be produced.”
 18 *Negotiated Data Solutions LLC v. Dell, Inc.*, No. 09-c-80012MISC-JF(HRL), 2009
 19 U.S. Dist. LEXIS 25026, *9, *10-12 (N.D. Cal. March 17, 2009). In *Negotiated Data*
 20 *Solutions*, the Court quashed a “probing deposition” that would only serve to “cross-
 21 check” information the plaintiff received from another source. *Id.*, at *11. ACT has
 22 not identified any information it needs from Dr. Lemieux instead of AOMedia or
 23 Google, so ACT has not met its burden to conduct a nonparty deposition *in addition to*
 24 its discovery of AOMedia. *Franco v. Alorica Inc.*, No. 20-cv-05035-DOC(KESx),
 25 2021 U.S. Dist. LEXIS 245905, *11 (N.D. Cal. Nov. 5, 2021) (“Rule 45 generally
 26 disfavors shifting discovery burdens from parties to nonparties.”).

1 The subpoena to Dr. Lemieux in his individual capacity is gamesmanship by
 2 ACT, to exert undue pressure on AOMedia as AOMedia attempts to negotiate the
 3 scope of ACT's nonparty discovery requests. ACT only wants discovery from
 4 AOMedia from the time period prior to 2019, but Dr. Lemieux did not become
 5 associated with AOMedia until 2024. Lujin Decl. at ¶¶ 6, 12. So Dr. Lemieux does not
 6 have any first-hand knowledge of the information sought by ACT. *Id.* Dr. Lemieux's
 7 personal deposition subpoena should be quashed for this additional reason.

8 AOMedia itself is a nonparty and should not be subjected to an undue burden.
 9 Moreover, Dr. Lemieux is an *individual* associated with AOMedia, being subpoenaed
 10 in his personal capacity. "Non-parties have a different set of expectations.
 11 Accordingly, concern for the unwanted burden thrust upon non-parties is a factor
 12 entitled to special weight in evaluating the balance of competing needs." *Cusumano v.*
 13 *Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998); *see also Dart Indus. Co. v.*
 14 *Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980). ACT is aggressively
 15 pursuing individual discovery first, despite the unwanted burden to a nonparty. "Rule
 16 imposes a mandatory responsibility on this court to protect nonparties from unduly
 17 burdensome discovery." *In re NCAA Student-Athlete Name & Likeness Licensing*
 18 *Litig.*, 2012 U.S. Dist. LEXIS 110824, *11 (N.D. Cal. Aug. 7, 2012). The deposition
 19 subpoena of Dr. Lemieux, set to occur *prior* to duplicative AOMedia or Google
 20 discovery, is unduly burdensome. *Athalonz, LLC v. Under Armour, Inc.*, No. 24-misc-
 21 0047(DEH), 2024 U.S. Dist. LEXIS 65685, *10-11 (S.D.N.Y. April 10, 2024)
 22 ("Athalonz fails to demonstrate why Harper's non-party deposition should proceed
 23 now, before it has determined what non-duplicative information Harper may
 24 provide.").

25 In the event AOMedia ultimately agrees, or is ordered, to produce a corporate
 26 witness for deposition, Dr. Lemieux may very well be that witness. ACT is trying to
 27 intimidate an individual with multiple subpoenas instead of trying to resolve or
 28

1 enforce its subpoenas to AOMedia, which is improper. *Bd. of Trs. of the Leland
2 Stanford Junior Univ. v. Roche Molecular Sys.*, No. 05-c-04158, 2008 U.S. Dist.
3 LEXIS 125612, *9 (N.D. Cal. April 10, 2008) (deferring individual subpoenaed
4 depositions until after the completion of corporate and party-witness depositions “to
5 avoid duplicative discovery”).

6 **B. A Deposition of Dr. Lemieux Would be a Pure Fishing Expedition**

7 As in *Negotiated Data Solutions*, a fishing expedition of a nonparty is
8 unreasonable. 2009 U.S. Dist. LEXIS 25026 at *11. ACT appears to want to question
9 Dr. Lemieux about internal or potentially sensitive AOMedia matters, without any
10 indication Dr. Lemieux has additional, responsive information beyond what AOMedia
11 served in response to the four AOMedia Subpoenas. AOMedia is an organization
12 with standards available for free on its website. Lujin Decl. at ¶ 7. AOMedia provides
13 extensive information on its website, but ACT has continued to question nonparty
14 AOMedia’s counsel about email repositories and other ESI-related information, with
15 no indication AOMedia’s search for responsive information was not reasonable or that
16 specific communications exist. ACT is fishing for any details regarding AOMedia’s
17 communications, in an attempt to conduct probing discovery against AOMedia and its
18 members.

19 ACT is pursuing discovery from nonparties Dr. Lemieux and AOMedia that
20 should be requested from defendant Google in the Underlying EDTX Case against
21 Google. For instance, ACT served the following document request on AOMedia:
22 “[a]ll communications between Google and AOM regarding ACT, ACT’s Patents,
23 and/or this litigation.” Lujin Decl. at ¶ 8. At the very least, party discovery should
24 proceed first and until some need (such as lost or destroyed communications) justifies
25 pursuing duplicative discovery from AOMedia, not to mention AOMedia’s Executive
26 Director in his individual capacity.

1 ACT appears to want to question Dr. Lemieux about ESI-related subjects that
 2 should be party-based discovery. This would be unusually burdensome for Dr.
 3 Lemieux (and to AOMedia) as a nonparty, particularly absent some compelling need
 4 or concrete showing of relevance. Additionally, ACT is interested in AOMedia
 5 information from prior to 2019, but Dr. Lemieux has only been associated with
 6 AOMedia since January 2024. Lujin Decl. at ¶¶ 6, 12. *Anderson v. Abercrombie &*
 7 *Fitch Stores, Inc.*, No. 06-cv-991-WQH(BLM), 2007 U.S. Dist. LEXIS 47795, *6
 8 (S.D. Cal. July 2, 2007) (“federal courts have incorporated relevance as a factor to be
 9 considered when ruling on motions to quash”).

10 The discovery sought by ACT against Dr. Lemieux would not be tethered to the
 11 accused implementations in the Underlying EDTX Cases. Instead, ACT wants broad,
 12 party-level discovery against a non-profit, nonparty despite no evidence of
 13 involvement by AOMedia (let alone the individual Dr. Lemieux) with the accused
 14 products. *Intermec Techs. Corp. v. Palm, Inc.*, No. 09-80098-MISC(WHA), 2009 U.S.
 15 Dist. LEXIS 132759, *6-7 (N.D. Cal. May 15, 2009) (“For the sake of argument,
 16 however, this order assumes that buried within the haystack of material sought, one
 17 could find a few needles of pertinence to the Delaware litigation. Nonetheless, the
 18 subpoena will be quashed in its entirety. The subpoena is so overbroad and
 19 burdensome that no uninvolved third party should be required to comply.”); *Epitopix,*
 20 *LLC v. Zoetis Inc.*, No. 25-mc-80083-JCS, 2025 U.S. Dist. LEXIS 86612, *15 (N.D.
 21 Cal. May 6, 2025) (quashing subpoena in part because it seeks irrelevant information
 22 and imposes an unjustified burden on a non-party).

23 ACT is trying to ambush Dr. Lemieux in an open-ended individual deposition
 24 to find a basis for ESI discovery of nonparty AOMedia, because ACT cannot currently
 25 justify the nonparty ESI discovery it seeks under its AOMedia Subpoenas. ACT
 26 should not be permitted to serve unlimited discovery as leverage against nonparties,
 27 just to possibly bolster its arguments about *the parties’* commercial implementations.
 28

1 The burden to an individual such as Dr. Lemieux is not justified where ACT merely
 2 wants to probe a nonparty and individual(s) associated with the nonparty, with no
 3 concrete reason to believe that Dr. Lemieux has relevant information regarding ACT's
 4 underlying litigation with Apple and Google.

5 **C. ACT Should Obtain the Discovery From AOMedia and the Parties**

6 Dr. Lemieux's personal deposition testimony is not relevant, at least because he
 7 was not involved with AOMedia until 2024 – more than 5 years after the pre-2019
 8 timeframe. Lujin Decl. at ¶¶ 6, 12. Furthermore, Dr. Lemieux's individual deposition
 9 is not necessary. ACT is abusing the judicial system by serving additional, redundant
 10 subpoenas from all angles on a nonparty. To the extent ACT seeks more information
 11 from AOMedia, that discovery should be sought directly from AOMedia. If and when
 12 ACT and AOMedia reach an impasse, then ACT should seek that discovery in the
 13 district for compliance with the AOMedia subpoenas (the District of Massachusetts).

14 *Id.* at ¶ 8.

15 The Court has broad discretion to permit or deny discovery. *See Hallett v.*
 16 *Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). To justify nonparty subpoenas under Rule
 17 45, ACT has the burden of demonstrating to the Court that the information sought is
 18 relevant. *See id.* at *13-14 (“The resolution of the Motion to Quash turns on whether
 19 the information that Defendant City seeks is relevant to the claims and defenses at
 20 issue in the action and proportionate to the needs of the case.”). ACT has not
 21 demonstrated that Dr. Lemieux has necessary information that is relevant to the
 22 Underlying EDTD Cases and that cannot be obtained from Google or AOMedia.
 23 Thus, ACT has not met its burden to conduct a nonparty deposition of Dr. Lemieux *in*
 24 *addition* to its other outstanding discovery. *Franco v. Alorica Inc.*, No. 20-cv-05035-
 25 DOC(KESx), 2021 U.S. Dist. LEXIS 245905, *11 (N.D. Cal. Nov. 5, 2021) (“Rule 45
 26 generally disfavors shifting discovery burdens from parties to nonparties.”).

IV. CONCLUSION

The Court should quash this Subpoena to Dr. Lemieux as unreasonably cumulative and burdensome because it is duplicative of the already-served discovery on AOMedia and an improper end-run around that discovery, in an attempt to burden or intimidate an individual witness for the purpose of gaining leverage in negotiations over the scope of discovery with another nonparty (AOMedia).

Dated: May 19, 2025

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

By: /s/ Mayela C. Montenegro-Urch
Mayela C. Montenegro-Urch
Aubrey L. Kramer

Attorneys for Nonparty Dr. Pierre-Anthony Lemieux